



February 15, 2022

MEMO ENDORSED

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square, Room 240
New York, NY 10007

USDC SDNY
DOCUMENT
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Re: **Joint Discovery Report**
Linda Evangelista v. Zeltiq Aesthetics, Inc.,
United States District Court for the Southern District of New York
Case No.: 1:21-cv-07889-VEC

Your Honor:

This office represents Defendant Zeltiq Aesthetics, Inc. ("Zeltiq"), in the above-referenced action. In accordance with the Court's order (ECF No. 19), this Joint Discovery Report is submitted jointly with Daniel F. Markham, Michael J. Levin, and Jodie Gerard of Wrobel Markham LLP, who are counsel for Plaintiff Linda Evangelista.

A. Written Discovery and Document Production

The parties have served and responded to initial sets of discovery. Zeltiq sent a deficiency letter on January 21, 2022 to which Plaintiff responded and also notified Zeltiq that it was discussing services in order to obtain information from Plaintiff's portable devices. Zeltiq's responses to Plaintiff's First Request for Documents and First Set of Interrogatories were served on February 14, 2022.

Zeltiq submitted to Plaintiff a proposed Document Production Order on January 28, 2022. Plaintiff responded with edits on February 14, 2022 and the parties are negotiating its terms. Once agreed to and/or resolved by the Court, the Document Production Order will govern the format for all production of documents by both parties in this matter.

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February 15, 2022

Page 2

B. Medical Records Release Authorizations

As the Court will recall, on December 7, 2021 the parties participated in a teleconference with the Court regarding medical authorizations. Zeltiq obtained ten authorizations from Plaintiff and immediately sent those to providers. To date, Zeltiq has received records from eight of the providers. In reviewing those records, Zeltiq has identified additional providers, including Plaintiff's gastroenterologist/internist and gynecologist. Zeltiq requested authorizations for these providers on February 8, 2022 but has not received a response.

Zeltiq has enclosed with the authorizations to the providers a cover letter which states that Zeltiq is "requesting a **certified copy of the entire record regarding Linda Evangelista**" (emphasis in original) while the enclosed authorizations only cover the Court ordered time period from present to May 15, 2011. Plaintiff stated for the first time in this joint discovery report that this has caused confusion among the providers despite the authorization stating the correct timeframe, and Plaintiff has had to contact each provider to ensure that only the records ordered by the Court are actually produced. One provider had planned to produce Plaintiff's entire medical record based upon the wording of the cover letter. Zeltiq agrees to revise the cover letter going forward for additional record requests.

It is Zeltiq's position that as a result of Plaintiff not providing an executed general authorization, the process of collecting records has been delayed. Zeltiq will continue to identify additional providers as it reviews newly collected records.

Additionally, Zeltiq has requested executed authorizations for tax and employment records and is informed via this letter that Plaintiff objects to releasing her tax and employment records. Zeltiq intends to contact the Court regarding this dispute.

February 15, 2022

Page 3

C. Motion to Dismiss

On December 21, 2021, Zeltiq filed a Motion to Dismiss under Federal Rule of Procedure 12(b)(6), and the parties have now fully briefed the Motion to Dismiss. No additional motions are pending.

Dated: February 15, 2022

Respectfully submitted,

By: s/Alyson B. Jones

Alyson B. Jones (*Pro Hac Vice*)

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cc (via ECF): Daniel F. Markham
Michael J. Levin
Jodie Gerard

The parties must meet and confer for at least one hour regarding the issue of employment and tax records in an effort to resolve the issue before they contact Chambers.

SO ORDERED.



2/16/2022

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE